

"(5) The term 'prescription drug' means a drug that is subject to section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act.

"(6) The term 'product' means a prescription drug or a prescription device.

"(7) The term 'valid', with respect to a prescription, means—

"(A) in the case of a drug, a prescription within the meaning of section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act that is in compliance with applicable law, including, in the case of a prescription for a drug that is a controlled substance, compliance with part 1306 of title 21, Code of Federal Regulations, or successor regulations; and

"(B) in the case of a device, an authorization of a practitioner within the meaning of section 520(e)(1) of such Act that is in compliance with applicable law.

"(8) The term 'without delay', with respect to a pharmacy filling a prescription for a product or ordering the product, means within the usual and customary timeframe at the pharmacy for filling prescriptions for products for the health condition involved or for ordering such products, respectively."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect upon the expiration of 30 days after the date of the enactment of this Act, without regard to whether the Secretary of Health and Human Services has issued any guidance or final rule regarding such amendment.

By Mr. HATCH (for himself, Mrs. FEINSTEIN, Mr. THUNE, Mr. TALENT, Mr. ALEXANDER, Mr. ALLARD, Mr. ALLEN, Mr. BAUCUS, Mr. BROWNBACK, Mr. BURNS, Mr. BURR, Mr. CHAMBLISS, Mr. COBURN, Mr. COLEMAN, Ms. COLLINS, Mr. CORNYN, Mr. CRAIG, Mr. CRAPO, Mr. DEWINE, Mr. DOMENICI, Mr. ENSIGN, Mr. ENZI, Mr. FRIST, Mr. GRAHAM, Mr. GRASSLEY, Mr. INHOFE, Mr. KYL, Mrs. LINCOLN, Mr. LOTT, Mr. LUGAR, Mr. MCCAIN, Mr. ROBERTS, Mr. SANTORUM, Mr. SESSIONS, Mr. SHELBY, Mr. THOMAS, Mr. VITTER, Mr. WARNER, Mr. BOND, Mr. BUNNING, Mr. DEMINT, Mrs. DOLE, Mr. GREGG, Mr. HAGEL, Mrs. HUTCHISON, Mr. JOHNSON, Mr. MARTINEZ, Mr. NELSON of Nebraska, Ms. SNOWE, Mr. SPECTER, and Mr. STEVENS):

S.J. Res. 12. A joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, it is with a sense of honor that my friend and colleague, Senator FEINSTEIN, and I rise to introduce a bipartisan constitutional amendment that would allow Congress to prohibit the physical desecration of the American flag.

I am proud and privileged to be working again with my California colleague on this important proposal. Among our principal cosponsors are our colleagues Senator THUNE and Senator TALENT. It is heartening to us to see some of the Senate's newest Members come to this issue with the same passion that its original supporters still feel.

This amendment is truly bipartisan. Today, we count 51 original cosponsors

of this resolution. And, nearly two-thirds of the Members of this body have indicated their support. Those numbers seem to grow with each passing year.

No doubt, some will still argue that this amendment is unnecessary. Fortunately, that refrain is gradually losing its punch.

When this amendment eventually passes the Senate, as I believe that it will, our victory will not be attributed to the passions of the moment. Rather, it will be due to the tireless efforts of citizens committed to convincing their elected representatives that this amendment matters.

I have heard from some Utahans who love our country's flag but are opposed to amending the Constitution. To them I would say, amending the Constitution should never be taken lightly. Yet after serious study of the issue, I have concluded there is no other way to guarantee that our flag is protected, as I will discuss in a few minutes.

And, indeed, guaranteeing the physical integrity of the flag is a cause worth fighting for. The American people seem to understand what the opponents of this amendment fail to grasp. This amendment is a necessary statement that citizens still have some control over the destiny of this Nation and in maintaining the traditions and symbols that have helped to bind us together in all our diversity for over 200 years.

Those who oppose protecting the flag through a constitutional amendment are probably not aware of our constitutional history. Indeed, for most of America's history, our Nation's laws guaranteed the physical integrity of the American flag.

These were laws no one questioned. No one every questioned that the simple act of providing legal protection for the flag, a unique symbol of our ties as a Nation, could somehow violate the Constitution.

We should take a moment and recall what we were taught about the flag as schoolchildren. Our flag's 13 stripes show our origins. We started as 13 separate colonies that first became separate States and then one Nation through the Declaration of Independence and the American Revolution. The 50 stars on the field of blue represent what we have become: a Nation unified. And over the past 230 years, we have become ever more united in our commitment to the extension of liberty and equality.

Among all of our differences, differences frequently reflected in this body, we do remain one Nation undivided and indivisible, and our flag is a simple but profound statement of that union. That is why we open the Senate each day by pledging our allegiance to the flag. It is a reminder of all that we have in common.

Supreme Court Justice John Paul Stevens understood the significance of the flag's status when he wrote:

A country's flag is a symbol of more than nationhood and national unity. It also sig-

nifies the ideas that characterize the society that has chosen that emblem as well as the special history that has animated the growth and power of those ideas . . . So it is with the American flag. It is more than a proud symbol of the courage, the determination, and the gifts of a nation that transformed 13 fledgling colonies into a world power. It is a symbol of freedom, of equal opportunity, of religious tolerance, and of goodwill for other peoples who share our aspirations.

There is a certain wisdom to Justice Stevens' statement that our constituents immediately grasp. Some polls show that over 80 percent of the American people support an amendment to protect the flag.

Its unique character is represented in the diversity of the groups that have worked over the years to bring this amendment to fruition. Veterans, police, African Americans, Polish Americans, farmers, and so many more diverse groups see in the flag a symbol of our Nation; they understand that it is perfectly consistent with our constitutional traditions for us to protect it.

Unfortunately, in 1989 the Supreme Court intervened and overrode every State law barring desecration of the American flag.

None of these States has restricted first amendment political speech in any way.

Their laws did not lead us down some slippery slope that would result in restraints on political opinions.

These States drew reasonable distinctions between political speech and inflammatory and frequently violent acts.

Yet in *Texas v. Johnson*, the Supreme Court held that a Texas statute, and others like it, that barred desecration of the American flag, violated core first amendment principles. That certainly would have been news to those who wrote the Constitution and our Bill of Rights.

It was news, bad news, to the American people as well.

So in response to this imprudent decision, the Senate acted quickly and passed The Flag Protection Act. It became law on October 28, 1989.

Then, in 1990, the Court struck down even this legislation in *United States v. Eichman*.

And that is why a constitutional amendment has become necessary.

With due respect to our courts, and to my colleagues who continue to support these decisions, these legal arguments against flag protection just do not hold water.

Detractors of our amendment contend that the first amendment guarantees the right to burn the American flag. It does no such thing.

They contend it would carve out an exception to the first amendment as some say. It would not. Rather, it would reaffirm what was understood not only by those who ratified the Constitution but also by citizens of today: that the first amendment never guaranteed such expressive conduct. Whether one is an originalist or whether one believes in a living Constitution, this argument falls short.